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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Application of:

Mike Bowling et al.

Serial No.: 10/630,290

Filed: July 30, 2003

For: Method of Wastewater Treatment
Utilizing White Rot and Brown Rot Fungi

Mail Stop Petition
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

RESPONSE TO DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

Sir:

The Applicant has received the Decision dated August 20, 2004. The initially filed Petition was initially dismissed for being deficient as related to 37 CFR 1.47(a)(1) and (2).

Specifically, the Senior Petitions Attorney observed that the petitioner should provide, with a renewed petition, a copy of the statement in which the non-signing inventor refuses to sign the Declaration. A portion of the July 18, 2003, letter received from the non-signing applicant is provided. Included in that letter is a statement that: "Therefore, I am returning the Declaration unsigned." The remainder of this letter, as the initial petition states, attributes the technology to others, but after a review of the allegations, no substantiation of Mr. Adams' allegations could be corroborated by the Applicant. In fact, Mr. Adams refers to a confidential report that was prepared at and for the applicant as being prior art. It is important to remember that at or about the time of the filing of this application, the applicant's company and the non-

signing inventor were involved adversely in litigation in the Hamilton County, Tennessee, court system.

With regard to Item (2), the applicant appreciates the Senior Petitions Attorney indicating that the Declaration would be acceptable if the signature block of the non-signing inventor is left blank. Enclosed is a substitute Declaration with the non-signing inventor's block left blank.

The Senior Petitions Attorney indicated that a filing fee surcharge of \$65.00 for a proper Declaration not present upon filing, was charged to the Deposit Account.

Accordingly, as instructed by the Senior Petitions Attorney, this is believed to be a complete response to the Dismissal and the proper paperwork is now believed to be in order for granting the Applicant's petition.

Respectfully submitted,



Stephen J. Stark
Reg. No. 43,152
Attorney for Applicant
832 Georgia Ave., Suite 1000
Chattanooga, TN 37402-2289
(423) 785-8229



CERTIFICATE OF MAILING

I hereby certify that the preceding Brief on Appeal is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Mail Stop Petition
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

On this 9th day of September, 2004.

Beverly L. Middleton
Beverly L. Middleton



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Mike Bowling et al.)
)
Serial No.: N/A)
)
Filed: Herewith)
)
For: Method of Wastewater Treatment)
Utilizing White Rot and Brown Rot Fungi)

SUPPLEMENTAL PETITION

**Declaration Under 35 U.S.C. §118
and C.F.R. 1.47 (b) - Proof of Refusal
To Sign Application Papers**

I, Stephen J. Stark, hereby state the following and declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon:

1. That I am an attorney in the State of Tennessee and a Patent Attorney registered before the U.S. Patent & Trademark Office. My Registration number is 43,152.

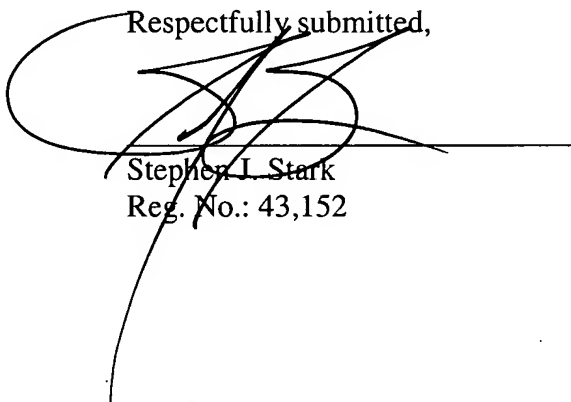
2. The Petition filed concurrently with the filing application is incorporated by reference and a copy of which is attached hereto as Exhibit A.

3. I received a letter dated July 18, 2003, from the non-signing inventor. As a portion of this letter, the non-signing inventor stated: "Therefore, I am returning the Declaration unsigned." This inventor was provided with the application papers, the specification claims, and filing papers (there were no drawings filed with this application). See Exhibit B.

4. The Declaration of Mike Bowling is provided as Exhibit C.

Further I state not.

Respectfully submitted,



Stephen J. Stark
Reg. No.: 43,152

SJS:blm
Attachments



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Mike Bowling et al.)
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Serial No.: N/A)
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Filed: Herewith)
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PETITION

**Declaration Under 35 U.S.C. §118
and C.F.R. 1.47 (b) - Proof of Refusal
To Sign Application Papers**

I, Stephen J. Stark, hereby state the following and declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon:

1. That I am an attorney in the State of Tennessee and a Patent Attorney registered before the U.S. Patent & Trademark Office. My Registration number is 43,152.

2. That I represent Sorce, Inc. ("Sorce") a corporation having an address at P. O. Box 1493, (6613 Schooner Bay Lane), Hixson, Tennessee 37343, and I am authorized to make this Petition in behalf of Sorce.

3. That I prepared a patent application as attorney for Sorce entitled "Method of Wastewater Treatment Utilizing White Rot and Brown Rot Fungi." That investigation of the facts showed that Mike Bowling and Phil Adams were joint inventors in this application.

4. On June 30, 2003, I provided Sorce with a copy of the enclosed patent application with the filing papers. All the filing papers including the enclosed Assignment and Powers of Attorney except for the Declaration were signed by both inventors on July 7, 2003. Apparently both inventors overlooked the Declaration which was located at the end of the patent application.

5. Upon return of the documents, I realized that the Declaration was unsigned. The application with the Declaration was then returned to Sorce, Inc., for signing by both inventors.

6. Prior to receiving a returned and executed copy of the Declaration from both inventors, Mr. Adams terminated his employment status with Sorce, Inc. with the parties apparently being at least somewhat unamicable toward one another at this time.

7. On or about July 16, 2003, I was informed of Mr. Adams' departure from Sorce, Inc. I sent by Federal Express a copy of the application with the Declaration and requested that

Mr. Adams sign the Declaration as it was his duty to do so under the Assignment he had already executed.

8. Mr. Adams returned the Declaration and application to me unsigned along with a statement wherein he attributed at least some of the claimed subject matter as being obtained from another party.

9. The information proposed by Mr. Adams was investigated by Sorce, Inc. Apart from self-serving statements, no proof of inventorship by the third party was located in any references cited by Mr. Adams which could be considered prior art.

10. Upon information and belief, Mr. Adams is competing with Sorce possibly using the claimed subject matter to the detriment of Sorce.

11. The Assignment shows that Sorce, Inc. is the proper owner of this application is enclosed.

12. A power of attorney from Mr. Adams is enclosed.

13. Sorce, Inc. has informed me that they do not believe the assertions made by Mr. Adams as it relates to derivation from another party. Sorce, Inc. questions the veracity of the statements made by Mr. Adams in light of his initial actions as they relate to signing all the

documents but the one overlooked document on July 7, 2003, and then after terminating his employment with Sorce, Inc. immediately disavowing patentability of the subject matter.

14. Consequently, it is submitted that a bona fide attempt has been made to have Mr. Adams execute the patent application papers for the subject application and that this attempt has proven fruitless.

15. Therefore, Sorce, Inc., asserts title of the above recited application and request that the filing date and serial number be granted for this application, and I, as having power of attorney from Mr. Adams and representing Sorce, Inc. the assignee of Mr. Adams' rights to this application as its attorney, have executed the Declaration on behalf of Mr. Adams.

16. That having shown refusal of Mr. Adams to execute the application, and that title to the application vests in Sorce, Inc., and that irreparable harm will occur if this Petition is not granted, it is hereby requested that the Petition be granted.

17. That the Petition fee under 37 CFR 1.17 (c) of \$130.00 is enclosed herewith.

Further I state not.

Respectfully submitted,

Stephen J. Stark
Reg. No.: 43,152

SJS:blm
Attachments

**Mr. Stephen J. Stark
Miller & Marin LLP
Attorneys at Law
Suite 1000, Volunteer Bldg.
832 Georgia Ave
Chattanooga, TN 37402-2289**

I have been worried about this patent application since Mike and I began the process. My mind was putting doubt about "our new technology". However, I put off those doubts in the excitement of the company filing and having my name attached to a patent. It was a blessing in disguise that we forgot to sign the Declaration.

test the wastewater at _____ We had _____
process to prove to the technology was credible. I have attached their report that was sent _____
to me on _____. This report clearly demonstrates the 81.91% color removal from the _____

Therefore, I am returning the Declaration unsigned.

Sincerely

A handwritten signature in cursive script, appearing to read "Phil Adams".

Phil Adams

SEP 13 2004
PTO
TRADEMARK

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

**DECLARATION FOR UTILITY OR
DESIGN
PATENT APPLICATION
(37 CFR 1.63)**

☒ Declaration Submitted with Initial Filing
OR
☐ Declaration Submitted after Initial Filing (surcharge (37 CFR 1.16 (e)) required)

Attorney Docket Number 10326-0001 33,212

First Named Inventor Bowling et al.

COMPLETE IF KNOWN

Application Number

Filing Date

Art Unit

Examiner Name

As the below named inventor, I hereby declare that:

My residence, mailing address, and citizenship are as stated below next to my name.

I believe I am the original and first inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled:

METHOD OF WASTEWATER TREATMENT UTILIZING WHITE ROT AND BROWN ROT FUNGI

(Title of the Invention)

the specification of which

☒ is attached hereto

OR

☐ was filed on (MM/DD/YYYY) [] as United States Application Number or PCT International

Application Number [] and was amended on (MM/DD/YYYY) [] (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent, inventor's or plant breeder's rights certificate(s), or any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached?	
				YES	NO
None			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto:

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

DECLARATION — Utility or Design Patent Application

Direct all correspondence to: <input type="checkbox"/>		Customer Number or Bar Code Label	03490	OR <input checked="" type="checkbox"/>	Correspondence address below	
Alan Ruderman						
Name						
Miller & Martin LLP						
Address Suite 1000 Volunteer Building; 832 Georgia Avenue						
Chattanooga			Tennessee	37402-2289		
City			State	ZIP		
USA		(423) 756-6600		(423) 785-8480		
Country		Telephone		Fax		
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.						
NAME OF SOLE OR FIRST INVENTOR :			<input type="checkbox"/> A petition has been filed for this unsigned inventor			
Given Name Michael			Family Name Bowling			
(first and middle [if any])			or Surname			
Inventor's Signature <i>Michael Bowling</i>			Date 7/7/03			
Hixson		Tennessee	USA	USA		
Residence: City		State	Country	Citizenship		
6613 Schooner Bay Lane						
Mailing Address						
Hixson		Tennessee	37343	USA		
City		State	ZIP	Country		
NAME OF SECOND INVENTOR:			<input type="checkbox"/> A petition has been filed for this unsigned inventor			
Given Name			Family Name			
(first and middle [if any])			or Surname			
Inventor's Signature			Date			
Residence: City		State	Country	Citizenship		
Mailing Address						
City		State	ZIP	Country		
<input type="checkbox"/> Additional Inventors are being named on the _____ supplemental Additional Inventor(s) sheet(s) PTO/SB/02A attached hereto.						